

1. The statement of claim in this matter was filed on 4/2/2020 and was served on the defendant sometime in September, 2020.
2. In line with Rules of this Honourable court, the defendant is required to enter appearance and file his statement of defence, if any, not later than 21 days after being served with the statement of claim.
3. The defendant has been properly served with all the court process including hearing notices and had up till October, 2020 to file his statement of defense after filing his memorandum of appearance.
4. The defendant has not filed and served the claimant with memorandum of appearance and statement of defence till date.
5. The defendant was further served with issue for trial up till date the defendant has not taken any steps.
6. Order 21 Rules 9 of the Rules of this court allows the claimant to apply for default judgment where the defendant defaults in filing his statement of defence.
7. In the circumstance, this Honourable court is vested with the requisite powers to grant this application for default judgment as prayed.

In support of the Claimant's application is an 11 paragraphed affidavit, deposed to by one Sunkami Adebayo, a manager in the Claimant's Company. Torsaa Mathew Esq. settled a written address on behalf of the claimant wherein he formulated an issue for determination, that is:

Whether the Honourable court has the powers and jurisdiction to grant the reliefs prayed.

The contention of the claimant is that since the service of the writ and statement of claim on the defendant, the defendant failed and or neglected to respond to the processes, hence the court should enter default judgment in favour of the claimant. He submits that this application is brought in good faith, and in order to expedite the determination of this suit. Counsel urged the court to so hold; reference was made to Order 10 r 5 & Order 21 r 9 of the rules of this court, that same empowers this court to grant the reliefs of the claimant. He cited the case of MADUIKE V TETELIS (NIG) LTD (2016) 6 NWLR (PT. 1509) P. 619 C.A; INEC V ASSOCIATION OF SENIOR CIVIL SERVANT OF NIGERIA & ANOR to support his argument on default judgment. Learned counsel to the claimant urged the court to enter default judgment in favour of the claimant/applicant.

The claimant in the statement of claim filed on the 04/02/2020 claims against the defendant as follows:

1. A DECLARATION that the Claimant's Right of Occupancy over Plot no. CP 7 Lugbe 1 Layout, Lugbe Abuja still subsists.
2. A DECLARATION that the acts of the Defendant using his position to threaten the Claimant and forcefully snatch away his plot of land from the claimant are outrageous, oppressive and constitute trespass.
3. AN ORDER of perpetual injunction restraining the Defendants, his armed boys, agent, servants and privies from further acts of trespass on the Claimant's

piece and parcel of land lying and situate at over Plot no. CP 7 Lugbe 1 Layout, Lugbe Abuja.

4. N100,000,000 being special, aggravated and general damages for destruction of Claimant's properties and trespass, breakdown as follows:

A) SPECIAL DAMAGES N45,000,000

Particulars

Cost of damaged concrete fence and iron Gates N15, 720, 000

Cost of 8000 blocks at N160/each N1, 280, 000

Cost of iron rods and 2 big plastic water tanks N28, 000, 000

B).Aggravated Damages N3, 152, 0000

C).General Damages for Trespass 8,000,000

In civil cases, it is trite that the burden of first proving the existence or non-existence of a fact lies on the party against whom the judgment of the Court would be given if no evidence were produced on either side, regard being had to any presumption that may arise on the pleadings. See *Section 133(1) (2); Section 132 of the Evidence Act 2011*

The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side. See *MTN NIGERIA COMMUNICATIONS LTD v. OLAJIRE A. ESUOLA (2018) LPELR-43952(CA)*

Section 131(1) whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

Section132. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

133(1) In civil cases the burden of first proving the existence or non-existence of a fact lies on the party against whom the judgment of the

court would be given if no evidence were produced on either side, regard being had to any presumption that may arise on the pleadings."

See ALHAJI ADEBAYO AKANDE v. JIMOH ADISA & ANOR (2012) LPELR-7807(SC)

In the present case, the burden rest squarely on the claimant to prove what he assert in the statement of claim and in doing so he is to adduce adequate evidence to prove his title to Plot No. CP 7 Lugbe 1 Layout Abuja in accordance to the provisions of law.

It is trite that there are five (5) ways of proving or establishing title to land. Per ABDU ABOKI, JCA in the case of BABA MAIKANTI & ORS v. 7UP BOTTLING COMPANY PLC (2013) LPELR-20297(CA) states the five ways as follows:

"...Thus in Nnadozie v. Omesu (1996) 5 NWLR (pt. 446) it was held that: "It is settled law that there are five different ways the proof of one of which suffice, of proving ownership of any land in Nigeria, viz: by (1) Traditional evidence (2) production of document of title duly authenticated unless they are documents twenty years old or more produced from proper custody. (3) Acts of possession in and over the land in dispute extending over a sufficient length of time, numerous and positive enough as to warrant the inference that the persons in possession are the true owners. (4) Acts of long possession and enjoyment of other land so situated and connected with the land in dispute by locality or similarity that the presumption under s.46 of the Evidence Act applies and the inference can be drawn that what is true of one piece of land is likely to be true of the other piece of land. (5) Proof of possession of connected or adjacent land, in circumstances rendering it probable that the owner of such connected or adjacent land would in addition be the owner to the land in dispute."

The Claimant's claim in this suit is primarily one for a declaration of title to land. The law is that where a plaintiff seeks for a declaration of title to land he shall succeed on the strength of his case rather than rely on the weakness of the defence. A claimant seeking for a declaration of title to land bears the onerous duty in law to adduce credible and admissible evidence in establishing such title.

Now, the question I ask here is can the court enter default judgment in respect to declaratory reliefs without the claimant presenting credible and cogent evidence from the witness box?

The answer is certainly No

The law is that a declaratory relief cannot be granted merely on default of defence or even on admission. See ALI PINDER KWAJAJFFA & ORS v. BANK OF THE NORTH LIMITED (2004) LPELR-1727(SC).

The claimant has a bounden duty to prove by credible and documentary evidence that plot no. CP 7 Lugbe 1 layout Abuja was allocated to him by the Minister of Federal Capital Territory, Abuja as pleaded in the statement of claim. It is not for this court to hold that the claimant's right of occupancy in respect to the said plot subsist without the claimant placing before the court necessary documents or that the document exist in his name. An averment without oral and documentary evidence to prove the existence of the title document will not entitle the claimant to the reliefs sought. The claimant here failed to present any witness or document to prove his claims.

In the case of INTERNATIONAL TEXTILE INDUSTRIES NIGERIA LIMITED v. DR. ADEMOLA OYEKANMI ADEREMI & ORS (1999) LPELR-1527(SC) stated the nature of a declaratory – *“A declaratory relief is merely a confirmation of what is already the state of affairs or what is likely to be, in connection with the subject-matter of the declaration. In other words, a declaration claimed must relate to some legal right or to a legal interest of which the law will take cognizance. See*

Nixon v. Attorney General (1930) 1 Ch 566 at 674. A plaintiff who seeks a declaratory relief must show that he has an interest or right which forms a foundation for that declaration: see OLAWOYIN V. ATTORNEY GENERAL NORTHERN NIGERIA (1961) 2 NSCC 165 at 169."

As said earlier, I find that there is no evidence be it oral or documentary presented by the claimant to substantiate the facts pleaded in the statement of claim; there is no document whatsoever to substantiate the fact that the subject matter was allotted to the claimant by the Minister of Federal Capital Territory, Abuja. I find as a fact that the **motion: 690/2021** filed by the claimant cannot take the place of the evidence expected of a claimant in matters of title to land and I so hold. The law enjoins the claimant to adduce sufficient evidence before the court, as a claim for title to land is not one fought by way of affidavit evidence.

A claimant who wants the court to grant him a declaratory relief must show the existence of such right by presenting convincing and cogent evidence; documents must be tendered and admitted in the course of giving testimony from the witness box.

I am not unmindful of the fact that the rules of this court provides that in all actions other than those in the preceding rules of this Order, if the defendant makes default in filing a defence, the claimant may apply to the court for judgment and such judgment shall be given upon the statement of claim as the court shall consider the claimant to be entitled to. See Order 21 r 6 & 9 HCR 2018. The onus is still on the claimant to prove the assertions contained in the statement of claim, where the defendant fails to file a defence. A claimant who seeks a declaratory relief must show that he has sufficient interest or right which forms a foundation for that declaration. In the instant case as can be

gleaned from the statement of claim, the claimant's case centers on the production of document and he must succeed on the strength of his own case. The claimant avers that he applied for land and was allocated Plot no. CP 7 Lugbe 1 Layout Abuja; he however failed to place before the court the document he relies on. The Supreme Court in ALHAJI ADEBAYO AKANDE v. JIMOH ADISA & ANOR (2012) LPELR-7807(SC) states thus what a claimant must show to succeed in a declaratory action as *"It is right and proper to identify the purpose of a declaratory action and what a party must show to be entitled to it. It has been emphasized in decided authorities of this court that the purpose of a declaratory action is essentially to seek an equitable relief in which the plaintiff prays the court in the exercise of its discretionary jurisdiction to pronounce or declare an existing state of affairs in law in his favour as may be discernable from the averments in the statement of claim. In order to be entitled to a declaration, a person must show evidence of a future legal right subsisting or in the future and that the right is contested. What would entitle a plaintiff to a declaration is a claim which a court is prepared to recognize and if validly made it is prepared to give legal consequence."*

[underlined emphasis mine]

From the evidence before the court, I find as a fact that the claimant failed to substantiate the averments stated in the statement of claim with cogent or credible evidence. Consequently, I hold that the claimant is not entitled to any of the reliefs sought and the matter is dismissed accordingly. There is no order as to cost.

**ASMAU AKANBI-YUSUF
(HON. JUDGE)**

APPEARANCES

Parties are absent

No Legal Representative